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13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

16 IN RE CATHODE RAY TUBE (CRT)  
17 ANTITRUST LITIGATION

18 This Document Relates To:

19 *ViewSonic Corporation v. Chunghwa*  
20 *Picture Tubes, Ltd., et al.*, Case No. 3:14-  
21 cv-02510

Master File No. 3:07-cv-05944-SC

MDL No. 1917

Individual Case No. 3:14-cv-02510

**PLAINTIFF VIEWSONIC  
CORPORATION'S MOTION FOR LEAVE  
TO FILE SURREPLY IN OPPOSITION TO  
PANASONIC DEFENDANTS' MOTION  
TO DISMISS AND TO COMPEL  
ARBITRATION**

**NOTICE OF MOTION AND MOTION**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Plaintiff ViewSonic Corporation (“ViewSonic”) hereby moves the Court for an order granting ViewSonic leave to file its Surreply in Opposition to Panasonic Defendants’ Motion to Dismiss and to Compel Arbitration.

This motion is based upon this Notice of Motion and Motion, the Memorandum of Points and Authorities in support thereof, and such other materials and information that the Court may properly consider.

**MEMORANDUM OF POINTS AND AUTHORITIES**

Plaintiff ViewSonic Corporation (“ViewSonic”), by and through its undersigned counsel, hereby respectfully submits this Memorandum in Support of its Motion for Leave to File a Surreply in Opposition to the Panasonic Defendants’ Motion to Dismiss and to Compel Arbitration (the “Motion”). As reflected in ViewSonic’s proposed surreply (attached to the Declaration of Astor H.L Heaven as Exhibit A), ViewSonic seeks leave as required under Civil Local Rule 7-3(d) to file a surreply to respond to factual assertions, arguments and authorities that the Panasonic Defendants (“Panasonic”) raised for the first time in the Reply in Support of Panasonic’s Motion to Dismiss and Compel Arbitration (Dkt. 2897) (the “Reply”).

ViewSonic respectfully submits that a short surreply is justified and necessary to assist the Court in resolving factual assertions and arguments that Panasonic raised for the first time in its Reply. There is ample precedent supporting ViewSonic’s Motion. Indeed, this Court has granted motions for leave to file surreplies in similar situations, both in this MDL and in other cases where parties sought to address arguments and assertions first raised in subsequent briefing. *See In re Cathode Ray Tube (CRT) Antitrust Litig.*, 07-5944 SC, 2014 WL 2581525, at \*1 n.2 (N.D. Cal. June 9, 2014) (granting the indirect purchaser class leave to file a surreply pursuant to Civ. Local R. 7-3(d) in opposition to a motion to dismiss after defendants included new arguments in their reply); *In re Cathode Ray Tube (CRT) Antitrust Litig.*, 07-5944 SC, 2014 WL 2581581, at \*1 n.1 (N.D. Cal. June 9, 2014) (granting the Toshiba defendants’ leave to file a surreply in opposition to Sharp’s motion for leave to file an amended complaint pursuant to Civ. Local R. 7-3(d)); *Toomey v. Nextel Commc’ns, Inc.*, C-03-2887 MMC, 2004 WL 5512967, at \*1 (N.D. Cal. Sept. 23, 2004) (granting motion for leave to file surreply to address arguments “raised for the first time in Nextel’s reply, and purported misstatements of fact in Nextel’s reply”); *Sharper Image Corp. v. Consumers Union of U.S., Inc.*, 03-4094 MMC, 2004 WL 2713064, at \*1 n.1 (N.D. Cal. Feb. 23, 2004) (granting motion for leave to file surreply to “respond[ ] to arguments raised for the first time” in reply).

Here, ViewSonic seeks leave to primarily respond to three arguments that Panasonic failed to raise in its Motion to Dismiss and Compel Arbitration (“Motion to Dismiss”), and that it

1 only raised for the first time in its Reply. First, Panasonic argues that the sole dispute is one of  
2 contract interpretation and that issues of contract interpretation must be submitted to an arbitrator.  
3 Reply at 1-3. Panasonic never raised this issue in its Motion to Dismiss (*see* Dkt. 2767), and  
4 ViewSonic never addressed the specific issue in its Opposition. ViewSonic presents arguments in  
5 its Opposition in support of the proposition that the Court should give effect to the terms of the  
6 parties' agreement, but it never addressed the specific issue of whether this dispute is solely an  
7 issue of "contractual interpretation" and whether "contractual interpretation" is an issue for the  
8 arbitrator. Second, Panasonic argues that the respective arbitration rules "reserve questions of  
9 jurisdiction and scope to the arbitrator." Reply at 5. Panasonic also never raised this issue in its  
10 Motion to Dismiss, and ViewSonic never addressed the specific issue in its Opposition. Third,  
11 Panasonic argues that the Court should not consider extrinsic evidence (including a declaration  
12 and several OEM agreements that ViewSonic attached to its Opposition). Panasonic only raised  
13 this argument in its Reply. A short surreply would assist the Court by providing additional  
14 clarification on these three issues and other factual assertions. Good cause exists for the Court to  
15 permit ViewSonic to file its surreply because it is limited to responding to new arguments and  
16 authorities that Panasonic had not previously made in its Motion to Dismiss.

17 For these reasons, this Court should grant ViewSonic's Motion for Leave to File Surreply.

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1 Dated: October 13, 2014

Respectfully submitted

2 /s/ Jason C. Murray

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